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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/535,457	03/24/2000	Fred Christian Baij	29462	2374

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EXAMINER

NGUYEN, CHI Q

ART UNIT	PAPER NUMBER
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3635

DATE MAILED: 03/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/535,457

Applicant(s)

BAIJ, FRED CHRISTIAN

Examiner

Chi Q Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 03 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 December 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11,23-30 and 65-77 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11,24-30 and 65-79 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 March 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

This Office action is in response to the applicant's amendment filed on 12/8/04.

Claim Objections

Claim 8 is objected to because of the following informalities: the examiner believes claim 8 is depending on claim 2 not 24. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 76 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The citation "wherein the trailing edge of a first said stud locator marking is separated from the leading edge of a second different said stud locator marking by a distance less than the distance between studs which are properly mounted at the respective said first and second stud locator markings" is confusing.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 78, 23-30, 65-77, and 79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Day (US 5,632,095) in view of Smyj (US 6,360,448).

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In regarding claims 1, 10-11, 65, 74, 75, 77, Day discloses a lumber product used in standard in the industry for framing comprises a lumber piece known as a stud, which may be a 2x2, 2x3, 2x4, 2x6, 2x8, 2x10, or 12x12 framing stud of varying lengths, a 4x8 or 4x12 laminated framing lumber piece, such as plywood, of varying lengths, marking lines spaced a $\frac{1}{2}$ " intervals or pre-selected interval, such as 12, 16, and 24 inches or combination thereof. Each of the elongated lumber having a first end and a second end, and a length therebetween, a front surface, a back surface, opposing sides extending between the front and back surfaces along the length thereof, and a thickness between the front and the back surfaces and between opposing sides thereof and having visible marking lines are imprinted or stamped on the lumber piece (col. 1, lines 43-55), visible marking lines 22, a 4x8 plywood laminated framing lumber piece 30, is also shown with visible marking lines 24 and 26 imprinted or stamped along all four edges on the face surface 27. It should be noted that the 16-inch and 24-inch increments are the industry standard for spacing framing studs, depending on the climate of the building are (cols. 2-3, figs. 2-3). See attached figures 2 and 3 with highlights, Day shows the stud locator markings being spaced from each other along the lengths of said elongate pieces of lumber at least one of the limited number of pre-determined stud spacing and the markings indicating the positions where the front and back surfaces of respective lumber pieces are to intersect the respective said elongate piece of lumber being visually conspicuous by double-lines markings as shown in figures 2-3.

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Day does not expressly teach each said stud locator marking having a leading edge, a trailing edge, and crossing lines extending between the leading edge line and the trailing edge line and disposed on the front face, wherein the leading edge and the trailing edge are displaced from each other by approximately a standard thickness of such stud lumber piece, said stud locator markings being visually conspicuous on the front surface of the elongate piece of lumber so as to quickly catch the viewer's eye.

Smyj teaches a system for laying out an installation of components comprises a stud locator 10 placed under lumber piece known as base plate 100. The stud locator having a plurality of markings 30 on edges, markings stud indicator 40, which having a leading edge, a trailing edge, and crossing lines extending between the leading edge line and the trailing edge line (figure 3). Because of the marking stud indicator 40 larger than the front or back faces of the base plate, therefore it's easily for carpenter to place and position studs right on the position that he would like to. Additionally, the stud indicator 40 is corresponding to 2x4 wood studs with attached surfacing components of standard thickness, i.e. $\frac{1}{4}$ ", $\frac{3}{8}$ ", $\frac{1}{2}$ ", $\frac{5}{8}$ " or $1 \frac{1}{4}$ " (see col. 3, lines 35-36, 58-61). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to modify the Day's markings for Smyj's stud locator markings having a leading edge, a trailing edge, cross lines extending between the leading edge and the trailing edge, and extending over the base plate. The motivation for doing so would have been to enhance more visibility for carpenter so that positioning studs more effective.

Day and Smyj teach the structural elements for the marking on lumber piece as stated above. However, Day and Smyj do not teach specifically at least one strap

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securing the plurality of elongate pieces of lumber together as said bundle. Examiner takes Official Notice the fact that lumber used in dwelling construction typically comes in bundles wrapped with straps. To provide either Day's or Smyj's lumber in strapped bundles would be obvious for delivery to the job site as this is a conventional technique.

With regard to claims 2-5, 24-27, 66-70, and 78-79, as set forth above, Day and Smyj teach the structural element for the stud-locating markers, which including the interval of 16 inch and 24 inch increments are the industry standard for spacing framing studs, depending on the climate of the building area (see col. 3, lines 13-16).

Additionally, Smyj teaches on column 3, lines 34-36, the interval is 16" from the center of each stud indicator 40 to the next. However, Day and Smyj do not disclose expressly a plurality of stud locator markings spaced along the lengths interval of 8", 16", 24", leading edge-to-edge, and the variation in spacing between the stud locator markings on a respective the framing lumber product, and between respective ones of the framing lumber products, being consistently no more than 0.13". Examiner considers this would have been obvious to one of ordinary skill in the art at the time the invention was made to arrange the markings on the studs at the desirable interval such as 8", 16", and 24" from leading edge-to-edge and adjust the spacing variation between the stud locator markings of the studs being consistently no more than 0.13" are considered as obvious design choice based on desired use to particular building area in relation to the climate requirement. Thus, the closer spacing for more framing studs would be the better reinforcement for the building structures.

In regarding claims 7-9, 23, 29-30, and 71-73, Day and Smyj teach the structural elements for the lumber product as discussed, wherein Smyj teaches in column 4, lines 16-18, each stud indicator 40 in the preferred embodiment depicted has a width 45 equal to a standard 2"x4" wood stud, 1 1/2", thus the thickness of each of the standard stud would obviously devoid or disappear the leading line and trailing line when the stud being positioned. However, Day does not teach specifically the elongated piece of lumber being substantially devoid of any marking indicators away from the stud locator markings, including sets of 2 side-by-side stud locator marking arrayed along of the framing lumber product, the locator marking having a respective leading edge line, a trailing edge line, and crossing lines between the leading and trailing edge lines, and the trailing edge line of the first stud locator marking is separated from the leading edge of the second stud locator marking by a distance greater than the distance between the leading edge and trailing edge of the first stud locator marking.

In regard claims 6, 28, and 76, Day and Smyj teach the structural elements for the lumber markings as stated. Additionally, Smyj shows the stud indicator 40 comprising two lines, which known as leading and trailing edge lines or 2 side-by-side stud locator marking along of the framing lumber product. The two-line marking known as leading edge line, and a trailing edge line; and the trailing edge line of the first marking is separated from the leading edge of the second stud locator marking by a distance (see fig. 3). Day and Smyj do not specifically teach a distance of second different said stud locator marking by a distance less than the distance between studs which are properly mounted at the respective of first and second stud locator markings.

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At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have variable distance between the first and the second stud locator to be less than the distance between studs which are properly mounted at the respective said first and second stud locator marking would have been obvious of rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70. The motivation for doing so would have been to provide proper markings for positioning studs...

Response to Arguments

Applicant's arguments with respect to claims 1-11, 23-30, and 65-79 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Chi Q. Nguyen whose telephone number is (571) 272-6847, Mon-Thu (7:00-5:30), Fridays off or examiner's supervisor, Carl Friedman can be reached at (571) 272-6842. The examiner's right fax number is (571) 273-6847.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pairedirect.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217-9197.

CQN

3/17/05



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